



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen M. Key

APPLICATION NO.: 10/005,428

FILING DATE: December 3, 2001

EXAMINER: Daniel R. Zirker

ART UNIT: 1771

ATTORNEY DOCKET NO.: PA2321US

DECLARATION OF DAVID NIEMUTH UNDER 37 C.F.R. § 1.132

I, David Niemuth, hereby state the following in traverse of the Examiner's rejections in the Office Action dated March 31, 2005 (*Office Action*) and issued with regard to U.S. patent application number 10/005,428:

1. I am presently Director of Labeling Technology for Krones Inc.
2. Krones Inc. develops and manufactures packaging equipment and systems and provides extensive product support for the same. Krones Inc. has been developing container labeling systems for over 50 years and is considered to set the standards in this field. Krones Inc. labeling systems utilize an entire range of applications, including cold (wet) glue, hot melt, self-adhesives and sleeves.
3. I earned an Associates degree in Business and Marketing from Western Wisconsin Technical Institute in La Crosse, Wisconsin. I am a member of the Label Printing Industries of America (LPIA) and the Label/Packing Suppliers Counsel (LPSC). I frequently lecture on various label application methods and machinery, including cold (wet) glue, hot melt, roll-fed, pressure-sensitive and sleeve machines. I have over twenty-two years of professional experience in the labeling industry.
4. I have reviewed the claims of the present application as they pertain to temporarily coupling the inner surface of an outer label to the outer surface of an inner label through the use of a temporary adhesive whereby the breaking of that temporary adhesive would allow for the rotation of the outer label about the inner label.

5. I have reviewed the *Office Action*, specifically those portions wherein the Examiner asserts "one of ordinary skill in the art is more than capable of designing [a label] to fit the required bonding characteristics" (*Office Action*, 4) and "temporary coupling is believed to be well within the skill of the art in view of the relief upon combinations . . . for a teaching that a wide variety of adhesives may be used." (*Office Action*, 5).
6. I have reviewed those portions of the references cited by the Examiner as purportedly evidencing the obviousness of the claimed subject matter of the present application: Barnum, Jr.; Ingle; Fumei; and Haines.
7. I believe myself to be skilled in the art of the technical field of the present application and cited references.
8. I have no personal or financial interest in the issuance of the present application nor does my employer, Krones Inc. In that regard, the substance of my declaration is that of an uninterested third-party.
9. I disagree with the Examiner's contention that these references, either alone or in combination, evidence the purported obviousness of the claims of the present application. Additionally, I do not believe there is any motivation to combine these references.
10. What the Examiner asserts as obvious to one of skill in the art is, in fact, countered by the state of the art in that prior to the filing of the present application, there were no labels or related machinery in the marketplace that utilized a temporary break-away coupling between an inner and outer label and, to my knowledge, nor was anyone other than the applicant presently exploring such a coupling methodology.
11. One explanation for why the art was not utilizing a temporary break-away coupling between an inner and outer label is that no one in the art would have wanted to utilize such a temporary coupling as the art sought stability of the label in the labeling process; a temporary coupling would not have been viewed as providing such stability.

12. For example, using a temporary coupling, an outer label could break free from the inner label resulting in the outer label coming off a container and becoming lodged in the labeling machinery. Furthermore, there would exist the possibility that, in the marketplace, that the inadvertent breaking of the coupling could cause the container/inner label to slip free from the outer label being handled by a consumer whereby the merchandise would be damaged by the slip and drop. The consumer, too, could be injured as a result of the breaking of the coupling and the shattering of a container on the ground.
13. In light of these facts, as they existed at the time the present application was filed, I am of the belief that no one in the art would have been motivated to use a break-away temporary coupling between an inner and an outer label allowing for rotation of an outer label about an inner label.
14. I am of the further belief that the references cited by the Examiner, especially in light of the absence of any motivation to make this combination, fail to evidence the purported obviousness of the claimed invention. That is, the various references (namely Ingle; Fumei; and Haines) evidence nothing more than various adhesives—not the use of any particular adhesive for the purpose of a break-away, temporary coupling.
15. I am of the further belief that the Examiner's remaining motivation to combine the aforementioned references—"to be able to both detach and then reattach the outer label to the inner label or container if so desired" (*Office Action*, 5)—is irrelevant as the present claims do not concern the reattachment of an outer label about an inner label but, instead, the rotation of an outer label about an inner label subsequent to the breaking of a temporary adhesive between the two.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the issuance of any patent hereon.

Date:

JUNE 30, 2005



David Niemuth